In the
Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1172

THE FIRST NATIONAL BANK OF BOSTON,
NEW ENGLAND MERCHANTS NATIONAL BANK,
THE GILLETTE COMPANY,
DIGITAL EQUIPMENT CORPORATION,
and
WYMAN-GORDON COMPANY,
APPELLANTS,

v.

FRANCIS X. BELLOTTI, ATTORNEY GENERAL,
and
COALITION FOR TAX REFORM, INC.
and UNITED PEOPLES, INC.,
APPELLEES.

On Appeal from the Supreme Judicial Court for the Commonwealth of Massachusetts

APPENDIX TO JURISDICTIONAL STATEMENT

BINGHAM, DANA & GOULD
100 Federal Street
Boston, Massachusetts 02110
Tel. No. (617) 357-9300
By FRANCIS H. FOX
E. SUSAN GARSH
Attorneys for Appellants

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TABLE OF CONTENTS

APPENDIX A

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH

AT BOSTON, February 1, 1977.

IN THE CASE OF SJC-653

THE FIRST NATIONAL BANK OF BOSTON
& others
vs.
ATTORNEY GENERAL & others

pending in the Supreme Judicial Court for the County of Suffolk No. 76-109 CIV.

ORDERED, that the following entry be made in the docket; viz.,—

See order entered on September 22, 1976.

BY THE COURT,

/s/ FREDERICK J. QUINLAN, Clerk.

February 1, 1977

S-653 S.J.C.

THE FIRST NATIONAL BANK OF BOSTON & others[1]
vs. ATTORNEY GENERAL & others[2]

LIACOS, J. The plaintiffs brought a declaratory judgment proceeding under G.L. c. 231A alleging that they intended to expend moneys to publicize, by newspaper advertisements and other similar methods, their views with respect

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[1] New England Merchants National Bank, The Gillette Company, Digital Equipment Corporation, and Wyman-Gordon Company.

[2] Coalition for Tax Reform, Inc., and United Peoples, Inc., interveners.

to a proposed constitutional amendment which was to be submitted to the voters as a referendum question at the general election on November 2, 1976. The proposed amendment, set out in the margin,[3] would permit, but not require, the Legislature to modify the income tax laws of the Commonwealth by imposing a graduated tax on the income of individuals (GIT). The Attorney General (the original defendant herein) indicated that he would prosecute the plaintiffs under the provisions of G.L. c. 55, § 8, as appearing in St. 1975, c. 151, §1,[4] if they were to expend moneys to

[3] "Article of Amendment. Art. As an alternative to levying a tax on income in the manner provided in Article XLIV of the Amendments to the Constitution, the General Court shall have full power and authority to levy a tax on personal incomes at rates which are graduated according to the total amount of income received, regardless of the sources from which it may be derived, and to grant reasonable exemptions, deductions, credits and abatements to such tax. Further, the General Court may define the tax liability or the total income upon which such tax is levied or the graduated rates at which it is taxed by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time and may prescribe reasonable exceptions to and modifications of such provision."

[4] Section 8 provides: "No corporation carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, or water company, no company having the right to take land by eminent domain or to exercise franchises in public ways, granted by the commonwealth or by any county, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, no business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding, promoting or antagonizing the interests of any political party, or influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation. No question submitted to the voters *solely* concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation. No

publicize their views on the proposed amendment to the general public. The plaintiffs sought a declaration that § 8 is unconstitutional on its face and as applied to them. They began this action by filing a complaint with the clerk of the Supreme Judicial Court for the county of Suffolk. The matter was heard before a single justice who permitted two groups to intervene as additional parties defendant[5] and reserved and reported the case to the full court. The matter was argued before this court on June 8, 1976. Due to the pendency of the election and the significance of the questions raised by this proceeding, an order of this court without opinion was entered on September 22, 1976, and judgment pursuant thereto was entered by the single justice on September 28, 1976.[6]

person or persons, no political committee, and no person acting under the authority of a political committee, or in its behalf, shall solicit or receive from such corporation or such holders of stock any gift, payment, expenditure, contribution or promise to give, pay, expend or contribute for any such purpose [emphasis supplied].

"Any corporation violating any provision of this section shall be punished by a fine of not more than fifty thousand dollars and any officer, director or agent of the corporation violating any provision thereof or authorizing such violation, or any person who violates or in any way knowingly aids or abets the violation of any provision thereof, shall be punished by a fine of not more than ten thousand dolars or by imprisonment for not more than one year, or both."

[5] Coalition for Tax Reform, Inc., and United Peoples, Inc. (both nonelected political committees).

[6] The text of that order is as follows: "This is a petition for declaratory judgment brought before the single justice of the Supreme Judicial Court. The plaintiffs seek a declaration that G.L. c. 55, § 8, as appearing in St. 1975, c. 151, § 1, is unconstitutional, both on its face and as applied to them.

"The plaintiffs assert that they intend to use corporate funds to publicize their views on a constitutional amendment which will be submitted to the voters through a referendum on the November 2d ballot and which would authorize the Legislature to impose a graduated personal income tax. They also assert that G.L. c. 55, § 8, unconstitutionally precludes them from doing so and that the Attorney General has indicated he will prosecute apparent violations of the statute. The plaintiffs further assert that there is a case or controversy under G.L. c. 231A, § 1.

The plaintiffs are two national banking associations organized under the laws of the United States with usual places of business in Boston, and three business corporations (two organized under the laws of the Commonwealth of Massachusetts and one under the laws of the State of Delaware), with either principal or usual places of business in Massachusetts. They all are actively involved in substantial business activities in Massachusetts. They all alleged that the adoption of the proposed amendment would substantially and materially affect their business activities in a variety of ways including, but not limited to, discouraging highly qualified executives and highly skilled professional personnel from settling, working or remaining in Massachusetts; promoting a tax climate which would be considered unfavorable by business corporations, thereby discouraging them from settling in Massachusetts with "resultant adverse effects" on the plaintiff banks' loans, deposits, and other services; and tending to shrink the disposable income of individuals available for the purchase

"The single justice heard the case on April 26, 1976, and reserved and reported the case without decision. On April 30, 1976, the Coalition for Tax Reform, Inc. and United Peoples, Inc. filed a motion to intervene as parties defendant. The original parties and interveners entered into a supplementary statement of agreed facts and on May 11, 1976, the single justice allowed the motion to intervene and entered a revised reservation and report indicating the changed circumstances.

"The case was heard by the court on June 8, 1976. On consideration of the facts and the law applicable, we rule that the plaintiffs have not shown that G.L. c. 55, § 8, is unconstitutional or an invalid exercise of legislative power. The single justice shall order the entry of an appropriate judgment declaring that the statute is valid and enforceable.

"A rescript and opinion will follow."

The plaintiffs filed a "Motion for Stay or Injunction and Expedited Determination" on September 30, 1976, which was denied by the full court on the same date. We note that they filed a "Notice of Appeal" to the Supreme Court of the United States on September 29, 1976. Said appeal appears to be pending before that court. We note further that the proposed amendment was defeated at the polls on November 2, 1976.

of the consumer products manufactured by at least one of the plaintiff corporations. Although the plaintiffs hold these views, the record does not establish that these views are supported in fact. Rather, the parties have agreed that "[t]here is a division of opinion among economists as to whether and to what extent a graduated income tax imposed solely on individuals would affect the business and assets of corporations." The statute requires generally that a referendum matter "materially affect" a corporation's "property, business or assets" before it may expend moneys to publicize its views on that matter. It states specifically that "[n]o question submitted to the voters solely concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation." The plaintiffs have not shown, on this record, that the type of taxation authorized by the proposed amendment in fact would have such an effect.[7]

1. *Legislative and Judicial History.*

We note that this is not the first time that this type of prohibition has been before us. In *Lustwerk* v. *Lytron, Inc.*, 344 Mass. 647 (1962), we held that a referendum question proposing a constitutional amendment granting the Legislature the power to impose a graduated income tax on either corporations or individuals (or both) reasonably might be thought by the directors of the defendant corporation to be a matter materially affecting the corporation's property, business or assets.[8] We, therefore, held that the

[7] The "Statement of Agreed Facts" stipulates that forty-one States and the District of Columbia impose income taxes and that thirty-six States and the District of Columbia have graduated income taxes.

[8] The text of the proposed constitutional amendment in issue in 1962 is set forth in the *Lustwerk* case at 648 n.1. The statute in issue is that case prohibited generally corporate contributions and expenditures in regard to elections (G.L. c. 55, § 7, as amended through St. 1946, c. 537, § 10). It is quoted in material part at 648

statute as then constituted did not prohibit expenditures by such corporations for the purpose of influencing the voters on that proposed constitutional amendment. In *First Nat'l Bank* v. *Attorney Gen.*, 362 Mass. 570 (1972) (*First Nat'l Bank I*), we considered the effect of a legislative amendment of the statute (after *Lustwerk*) which added the following sentence to G.L. c. 55, § 7: "No question submitted to the voters concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation." (See St. 1972, c. 458[9]).

The court was divided as to whether the issue of the validity of G.L. c. 55, § 7, could be resolved merely by statutory construction thereof or whether it was necessary to consider its constitutionality. Three Justices took the former view; two Justices took the latter view. All five agreed that the proposed constitutional amendment contained in the 1972 referendum question would authorize the Legislature to impose a graduated income tax on both individuals and corporations, or either. See *First Nat'l Bank I* at 575 (Tauro, C.J.) (Reardon, J., concurring); and at 593 (Quirico, J., with whom Braucher and Kaplan, JJ., join, concurring in the result). Chief Justice Tauro felt impelled in these circumstances to reach the constitutional

n.2 of *Lustwerk*. That statute was the precursor of G.L. c. 55, § 8, in issue here but was in significantly different form; it did not contain the sentence now included in § 8, namely: "No question submitted to the voters solely concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation." The prohibition on corporate political activity was merely stated to preclude corporations from expending or contributing money on matters "other than one materially affecting any of the property, business or assets of the corporation." Thus, neither the parties nor this court in *Lustwerk* had any legislative statement as to what "materially" affected the corporate interests.

[9] The text of G.L. c. 55, § 7, as it stood in 1972 is quoted in *First Nat'l Bank I* at 573 n.3. The text of the referendum question in 1972 is set forth in full in *First Nat'l Bank I* at 572 n.2.

issue involved in determining the validity of the prohibitions contained in G.L. c. 55, § 7. They came to the conclusion that this statute, as framed in 1972, was invalid because (in part) it did "not meet the requirements of a narrowly drawn law, circumscribing only the evil to be curtailed." *Id.* at 590. However, these Justices were careful to point out that they did "not reach the general question of the manner, mode and extent to which corporate expression may be limited to ensure free elections" (footnote omitted). *Ibid.*

The other three Justices did not find it necessary to reach the constitutional question. Rather, they interpreted the statutory addition as inapplicable to the 1972 referendum question because that question concerned the levying of a graduated corporate income tax as well as a graduated personal income tax. See *id.* at 593 (Quirico, J., concurring). Since three Justices held G.L. c. 55, § 7, inapplicable, and two others viewed it as unconstitutional, the plaintiffs of 1972 (some of whom are now plaintiffs in this matter) prevailed, and were allowed to make contributions to a political committee to campaign against the proposed amendment. It was defeated.

Subsequent to the decision in *First Nat'l Bank I*, G.L. c. 55 was amended on various occasions. General Laws c. 55, § 7, ultimately became G.L. c. 55, § 8. The most significant post-*First Nat'l Bank I* amendment was to rephrase the second sentence of the first paragraph previously found in § 7 by adding the word "solely." This sentence now reads: "No question submitted to the voters *solely* concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation" (emphasis supplied).[10]

[10] As to the post-*First Nat'l Bank I* revisions of G.L. c. 55, § 8, see St. 1973, c. 348; St. 1973, c. 1173, § 4B; St. 1974, c. 859; St. 1975, c. 151, § 1.

Further, the referendum question for 1976 did not, like the questions considered in *Lustwerk* and *First Nat'l Bank I*, apply in any way to corporate income taxation. The statutory amendment to § 8 makes it clear that the Legislature has specifically proscribed corporate expenditures of moneys relative to this proposed amendment. We conclude therefore that the plaintiffs' claim that G.L. c. 55, § 8, is unconstitutional must be considered. Before doing that, however, we must first deal with certain procedural problems raised by the defendants.

2. *Procedural Considerations.*

In *First Nat'l Bank I, supra,* a challenge was raised to the constitutionality of the precursor to § 8 in a proceeding for declaratory relief. When an actual controversy exists we have held that such a proceeding against the Attorney General is an appropriate method of securing a determination of such a claim. *Mobil Oil Corp.* v. *Attorney Gen.*, 361 Mass. 401, 405 (1972), and cases cited. Cf. *Attorney Gen.* v. *Kenco Optics, Inc.*, Mass. , (1976).[a] The defendants do not dispute the use of this procedure in such circumstances but they argue (a) that this particular case is not ripe for adjudication, and (b) that there is not an actual controversy over one of the issues presented. We disagree.

(a) The defendants ground their lack of ripeness claim on their characterization of the record in this case as "inadequate" to present the issues raised. They suggest that we defer consideration of these issues until after a full trial on the merits. We think that the record in this case, which consists of an extensive stipulation of facts among the parties, is sufficient to support this adjudication and to present the issues raised. The record appendices total some 128 pages; there are 66 paragraphs of stipulated facts and 70 pages of supporting documents relevant

[a] Mass. Adv. Sh. (1976) 2, 6.

to those stipulations. To the extent that the record may be properly characterized as "inadequate," we believe that the inadequacy is related to the plaintiffs' failure on certain evidentiary propositions, a matter we treat below in part 3 (d) of this opinion. Thus, the only inadequacy present relates to the merits of the plaintiffs' position rather than to the procedural posture of the case.

(b) The defendants also claim that, because the Attorney General has indicated that he will not prosecute the plaintiffs for distributing "in-house" newspapers to employees or communications to stockholders that advocate their position on the GIT, there is no actual controversy (see G.L. c. 231A, § 1) presented as to that matter. However, there is an actual controversy presented as to the statute's general application, scope and construction, and resolution of that controversy will of necessity involve resolution of the problem of "in-house" publications and communications. Consequently, even if we were to determine that the Attorney General's stated position vitiates the existence of a controversy on the "in-house" issue standing alone, the case is nevertheless in a posture which requires determination of that narrow issue as part of the broader issue of the statute's general scope. Thus, the case is properly before us and we turn now to the constitutional issues presented.

3. *First Amendment Considerations.*

The plaintiffs' first constitutional claim is that G.L. c. 55, § 8, violates their rights under the First Amendment to the United States Constitution. They argue that the section is invalid on its face, and that it is overbroad and void for vagueness. Alternatively they claim that, even if facially valid, the statute is unconstitutional as applied to them. The plaintiffs argue further thay [sic] they are "artificial persons" and so cannot act or communicate except through representatives or third parties, whose actions or commu-

nications necessarily involve an expenditure by the plaintiffs. In essence, they assume a corporate right to free speech under both the Federal and State Constitutions and also assume that a prohibition of the expenditure of corporate funds impermissibly precludes the exercise of that right. It is clear that an act which limits either contributions or expenditures "operate[s] in an area of the most fundamental First Amendment activities." *Buckley* v. *Valeo,* 424 U.S. 1, 14 (1976). It is also clear that any statutory limitation on expenditures in regard to the electoral process imposes "significantly more severe restrictions on protected freedoms of political expression and association than do its limitations on financial contributions. *Buckley* v. *Valeo,* at 23. "[S]peech does not lose its First Amendment protection because money is spent to project [sic] it, as in a paid advertisement of one form or another." *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 761 (1976). Nor does the fact that speech is exercised by a profit-making entity defeat *per se* its constitutionally protected aspects. *New York Times Co. v. Sullivan,* 376 U.S. 254, 266 (1964). We note in this regard that G.L. c. 55, § 8, precludes both corporate contributions and corporate expenditures on political questions as to which the corporation's property, business or assets are not materially affected.[11]

We start then with the premise that G.L. c. 55, § 8, potentially implicates the First Amendment, and that any distinction between "speech" and "conduct," cf. *United States* v. *O'Brien,* 391 U.S. 367 (1968), has no vitality here.

[11] General Laws c. 55, § 1, defines the distinction between "contribution" and "expenditure." The plaintiffs rely primarily on the prohibition on expenditures in making their argument; the defendants argue that while the plaintiffs now allege they wish to "expend," the record shows that in 1972 all of the plaintiffs except Digital Equipment Corporation made contributions to a political committee in regard to the referendum question then in issue. Since G.L. c. 55, § 8, imposes a complete bar to either contributions or expenditures, the distinction made between them in *Buckley* v. *Valeo, supra,* is not helpful here. Also, under the view we take of this case it does not appear to be a relevant one.

See *Buckley* v. *Valeo, supra.* But this premise does not reach a more basic question here involved, namely, whether business corporations, such as the plaintiffs, have First Amendment rights coextensive with those of natural persons or associations of natural persons. Therefore, before we consider the plaintiffs' various claims, we must first consider whether and to what extent corporations possess First Amendment rights.

(a) *The First Amendment rights of corporations.* It is undisputed that a corporation "is neither a citizen of a state nor of the United States within the protection of the privileges and immunities clauses of Article IV, § 2 of the Constitution and the Fourteenth Amendment." *Asbury Hosp.* v. *Cass County,* 326 U.S. 207, 210-211 (1945). Furthermore, it has been stated that "[t]he liberty referred to in [the Fourteenth] Amendment is the liberty of natural, not artificial persons." *Northwestern Nat'l Life Ins. Co.* v. *Riggs,* 203 U.S. 243, 255 (1906). See *Hague* v. *Committee for Indus. Organizations,* 307 U.S. 496, 527 (1939). But there are limits on the extent to which corporations may be totally deprived of what would be considered due process "liberty" rights if normal persons were involved.

The Supreme Court has recognized that corporations are entitled to some Fourteenth Amendment protections whether they are viewed as "citizens" or not. In *Grosjean* v. *American Press Co.,* 297 U.S. 233, 244 (1936), the Court stated: "Appellant contends that the Fourteenth Amendment does not apply to corporations; but this is only partly true. A corporation, we have held, is not a 'citizen' within the meaning of the privileges and immunities clause. [Citation omitted.] But a corporation is a 'person' within the meaning of the equal protection and due process of law clauses, which are the clauses involved here." The Supreme Court had previously indicated in *Pierce* v. *Society of Sisters,* 268 U.S. 510, 535 (1925), that "[a]ppellees are corporations and therefore, it is said, they cannot claim for themselves the liberty which the Fourteenth Amendment guarantees. Accepted in the proper sense, this is true. *North-*

western Life Ins. Co. v. *Riggs,* 203 U.S. 243, 255 [1906]; *Western Turf Association* v. *Greenberg,* 204 U.S. 359, 363 [1907]. But they have business and property for which they claim protection."

The plaintiffs concede in their brief that they are "only asserting rights which stem from the equal protection and due process of law clauses." What they appear to argue is that such rights as corporations may have under such clauses are coextensive with the First Amendment rights of natural persons. They cite no case to this proposition nor do we find this aspect of their argument persuasive.

It seems clear to us that a corporation does not have the same First Amendment rights to free speech as those of a natural person, but, whether its rights are designated "liberty" rights or "property" rights,[12] a corporation's property and business interests are entitled to Fourteenth Amendment protection. *Pierce* v. *Society of Sisters, supra.* See *Bowe* v. *Secretary of the Commonwealth,* 320 Mass. 230, 251 (1946). It is also clear that, as an incident of such protection, corporations possess certain rights of speech and expression under the First Amendment.[13]

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[12] As Chief Justice Tauro and Justice Reardon recognized in *First Nat'l Bank I,* such characterizations may not be relied on to establish that corporations have no First Amendment rights: "The Attorney General concludes . . . that . . . a corporation cannot claim protection under the term 'liberty' in the due process clause, [and that] a corporation cannot claim a right to freedom of expression, because that is a liberty protected by the First Amendment, not a property right. We cannot agree." *Id.* at 583.

[13] The constitutional discussion by the two Justices in *First Nat'l Bank I* suggests that there may be a difference between the First Amendment rights afforded corporations in the business of communications and corporations pursuing general commercial interests. *Id.* at 584-585. See *New York Times Co.* v. *Sullivan,* 376 U.S. 254 (1964); *Joseph Burstyn, Inc.* v. *Wilson,* 343 U.S. 495 (1952). None of the plaintiffs here claims to be part of the "institutional press," nor do they claim the right of "free press." Nor has anyone asserted that G.L. c. 55, § 8, bars the press, corporate, institutional or otherwise, from engaging in discussion or debate on the referendum question. Consequently we need not venture an opinion on such matters.

Thus, we hold today that only when a general political issue materially affects a corporation's business, property or assets may that corporation claim First Amendment protection for its speech or other activities entitling it to communicate its position on that issue to the general public. This limitation is identical to the legislative command in the first sentence of G.L. c. 55, § 8. Put in another way, the Legislature has clearly identified in the challenged statute the parameters of corporate free speech.

(b) *The "unconstitutional as applied" attack.* The plaintiffs' alternative First Amendment claim is that § 8 is invalid as applied to them because adoption of a personal GIT would materially affect their business, property or assets. To support this claim the plaintiffs point to our decision in *Lustwerk* v. *Lytron, Inc.,* 344 Mass. 647 (1962), and to the opinion of Chief Justice Tauro in *First Nat'l Bank I.* The plaintiffs conclude that those opinions held the issue of a personal GIT to be "material *per se* to the business of all corporations operating within Massachusetts." We cannot agree that that is the import of those two opinions. *Lustwerk* was a director-shareholder's suit to enjoin the defendant corporation and its other directors from making an expenditure related to a general (corporate and personal) GIT referendum on the ground that such an expenditure would be *ultra vires.* We concluded, "[W]e cannot say on the basis of this somewhat meager record that a board of directors of a business corporation could not reasonably decide that its business would be materially affected by the grant of such . . . [a] taxing power." *Lustwerk* v. *Lytron, Inc., supra* at 651.

As we have previously indicated, *First Nat'l Bank I* involved a referendum on a general GIT. Even the two Justices reaching the constitutional question acknowledged the "materially affects" limitation, concluding only that "the plaintiffs' business interests [may be] reasonably

considered to be materially affected by the proposed [general GIT] constitutional amendment . . . .'' 362 Mass. at 591. As a result we think that the plaintiffs' extrapolation of the holdings in *Lustwerk* and *First Nat'l Bank I* to the current proposed amendment is unwarranted. While we do not doubt that those opinions stand for the proposition that the possible adoption of a corporate GIT or a corporate *and* personal GIT materially affects the business of all corporations in this Commonwealth, that issue is not before us at this time. Neither *Lustwerk* nor *First Nat'l Bank I* is controlling as to the validity of the second sentence of § 8 since the present referendum question provides no authorization for legislative enactment of a corporate graduated income tax.[14] The only question is whether the legislative judgment that ''[n]o question submitted to the voters solely concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation'' was a valid one. See G.L. c. 55, § 8. We cannot say that there was no rational basis for this legislative determination. Cf. *First Nat'l Bank I* at 592-597 (Quirico, J., concurring in result).

The statutory prohibition can only be invalid as to the plaintiffs if they have demonstrated that the proposed amendment does in fact materially affect their business. The plaintiffs have not made such a showing. Indeed, the plaintiffs admit as much in their brief, stating that ''[t]here is no express finding herein that the plaintiffs' material interests would in fact be affected by the ballot question.'' The plaintiffs attempt to overcome this failure of proof

[14] The plaintiffs point out that Chief Justice Tauro indicated in *First Nat'l Bank I* that the Legislature may already have the power to impose a graduated corporate excise tax on the basis of income. This question is also not before us.

in a number of ways which we discuss in the margin.[15] It is sufficient to note here that the plaintiffs' failure cannot be excused by any of their arguments. We conclude that, on this record, the statute is not unconstitutional as applied to the plaintiffs.

Nevertheless it is the plaintiffs' claim that the statutory proviso that ''[n]o question submitted to the voters solely concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of . . . [a] corporation,'' is overbroad and void for vagueness. We turn now to those concerns, treating the overbreadth issue first.

(c) *Overbreadth.* The doctrine of overbreadth, which applies to a statute that restricts First Amendment rights, allows a plaintiff to attack the statute in question as invalid on its face even if his speech or conduct ''might be of the class properly the subject of State regulation, for '[i]t matters not that the words . . . used might have been constitutionally prohibited under a narrowly and precisely drawn statute.' '' *Commonwealth* v. *A Juvenile,* Mass. , (1975),[b] quoting from *Gooding* v. *Wilson,* 405 U.S.

[15] The plaintiffs state that ''[i]n the nature of things there could not be such a finding in this case which was commenced in April [1976].'' It seems clear that, in the nature of things, the plaintiffs had control over the commencement of this litigation, and the fact that the case is before us on a stipulation of facts rather than after a full trial on the merits must be charged to the plaintiffs. As the defendants point out, the amendment of § 8 in question occurred in the spring of 1975 (see St. 1975, c. 151, § 1). The plaintiffs could then have sought declaratory relief and pursued a trial on the merits with sufficient time for adjudication before the November, 1976, election. They did not, and their failure to do so cannot excuse the absence of a finding that they are in fact materially affected by the proposed amendment.

The plaintiffs further argue that all they need show is a ''reasonable belief'' that the proposed amendment would materially affect them. While such a belief is relevant to the question whether such an expenditure would be ultra vires, cf. *Lustwerk* v. *Lytron, Inc.,* 344 Mass. 647, 651 (1962), standing alone it is not relevant to the question presented herein.

[b] Mass. Adv. Sh. (1975) 2766, 2772.

518, 520 (1972). "[T]he possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted and perceived grievances left to fester because of the possible inhibitory effects of overly broad statutes." *Broadrick* v. *Oklahoma*, 413 U.S. 601, 612 (1973). See *Commonwealth* v. *Dennis*, Mass. (1975).[c] Thus, even if the plaintiffs' expenditure of moneys can be regulated constitutionally by the Legislature, we must still determine whether § 8 applies to speech or other activities that cannot be constitutionally regulated.

The plaintiffs argue that the statute is overbroad in that it appears to prohibit activities which are protected, such as the use of "in-house" newspapers and publications or communications to stockholders on the question of a personal GIT; the participation by corporate employees (at corporate expense) in discussions at legislative hearings as to the advisability of adopting a personal GIT; and the publishing of letters to the editor on that subject in corporate newsletters. The constitutionality of a statute alleged to proscribe activities of this nature was before the Supreme Court in *United States* v. *C.I.O.*, 335 U.S. 106 (1948). In words equally applicable to this case, the Court stated: "If [the law] were construed to prohibit the publication, by corporations . . . in the regular course of conducting their affairs, of periodicals advising their [employees or stockholders] of danger or advantage to their interests from the adoption of measures, . . . the gravest doubt would arise in our minds as to its constitutionality." *Id.* at 121. However, we also agree with the Supreme Court that "[i]t would require explicit words in an act to convince us that [the Legislature] intended to bar a trade journal, a house organ or a newspaper, published by a corporation, from expressing views on candidates or political proposals in the regular

[c] Mass. Adv. Sh. (1975) 1924.

course of its publication. It is unduly stretching language to say that the [employees] or stockholders are unwilling participants in such normal organizational activities, including the advocacy thereby of governmental policies affecting their interests, and the support thereby of candidates [or proposals] thought to be favorable [or adverse] to their interests." *Id.* at 123. There are no such "explicit words" in § 8 and we do not think that the Legislature intended it to apply to such activities. Nor is there any language in § 8 which would preclude corporate officers, directors, stockholders or employees from expressing their views publicly on the merits of such a proposed referendum by participation in television or radio discussions, news conferences, statements issued to the press or through other similar means not involving contributions or expenditures of corporate funds. We add in this regard that the plaintiffs' claim that a corporation, being an artificial person, cannot communicate its views except by the expenditure of additional funds is demonstrated neither by this record nor the well known facts of American society. We credit the Legislature with knowledge of such facts and, in doing so, find that § 8 does not bar such activities which are in the normal course of the plaintiffs' corporate affairs and do not involve corporate expenditures specifically designed to influence the electoral process. This type of activity does not involve the type of corporate expenditures or injection into political campaigns or referenda which the Legislature sought to regulate in enacting § 8.

So construed, we believe that the statute avoids any potential overbreadth problems; "[f]acial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged statute." *Broadrick* v. *Oklahoma*, 413 U.S. 601, 613 (1973), quoted in *Commonwealth* v. *A Juvenile*, Mass. , 1975.[d] Because these

[d] Mass. Adv. Sh. (1975) 2766, 2786.

activities mentioned by the plaintiffs are not included within the legislative proscription in § 8 against contribution or expenditure of funds or other things of value for the purpose of "influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation," and the more specific command as to a personal GIT, we conclude that the statute is not "susceptible of application to protected expression." *Gooding* v. *Wilson,* 405 U.S. 518, 523 (1972). In adopting this construction we recognize that "our task is not to destroy the [statute] if we can, but to construe it, if consistent with the will of [the Legislature], so as to comport with constitutional limitations." *United States Civil Serv. Comm'n* v. *National Ass'n of Letter Carriers,* 413 U.S. 548, 571 (1973).

(d) *The void for vagueness issue.* "[T]he vagueness doctrine ensures that a statute be drawn with the requisite clarity so that a person has sufficient notice of what conduct on his part may be criminal. In addition, it ensures that no statute have such a 'standardless sweep' as to allow discriminate enforcement." *Commonwealth* v. *A Juvenile,* Mass. , - n.15 (1975),* and cases cited. Although there is thus a distinction between void for vagueness scrutiny and that scrutiny applicable to a claim of overbreadth, "the 'void for vagueness' doctrine often overlaps in effect the overbreadth doctrine." *Id.* at .† See generally *Karlan* v. *Cincinnati,* 416 U.S. 924, 925 (1974) (Douglas, J., dissenting). Indeed, the plaintiffs' claims herein with respect to vagueness are almost identical to their claims with respect to overbreadth. In effect they argue that the same statutory language that they perceive to be overbroad is also unconstitutionally vague and indefinite. We disagree.

* Mass. Adv. Sh. (1975) 2766, 2788-2789 n.15.
† Mass. Adv. Sh. (1975) at 2788 n.15.

A statute is void for vagueness only if "men of common intelligence must necessarily guess at its meaning . . . ." *Connally* v. *General Constr. Co.,* 269 U.S. 385, 391 (1926). See *Broadrick* v. *Oklahoma,* 413 U.S. 601, 607 (1973), and cases cited. It must be recognized in a vagueness inquiry, however, that "[w]ords inevitably contain gems of uncertainty," *id.* at 608, and that "there are limitations in the English language with respect to being both specific and manageably brief . . . ." *United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers, supra* at 578-579. Thus, "if the general class of offenses to which the statute is directed is plainly within its terms, the statute will not be struck down as vague, even though marginal cases could be put where doubts might arise." *United States* v. *Harriss,* 347 U.S. 612, 618 (1954).

On consideration of these constitutional guidelines, we hold that § 8 is not invalid by reason of being impermissibly vague. We recognize that the "materially affects" limitation is general in nature; but we also note that the statutory proscription in question here — the prohibition against corporate expenditures on a referendum question *solely* concerning a personal GIT — is both precise and definite. Furthermore, as to those activities which the plaintiffs claim may be within the specific proscription,[16] thereby making it unconstitutionally vague, we suggest they are so similar in nature to the types of activities claimed to make the statute overbroad that our limiting construction adopted in part 3 (c) of this opinion, *supra,* supplies any definiteness which the proscription otherwise might lack. Such a

[16] The plaintiffs wonder whether an economist employed by one of the plaintiff banks would be in violation of § 8 when his or her comments on the effect of adoption of a personal GIT are sought by a newspaper and he or she responds during working hours, and whether a lunchtime address on that subject by a corporate officer to a chamber of commerce would violate § 8. We think it clear from our overbreadth discussion that neither of these activities would violate the statute.

construction is an appropriate way to avoid invalidation on grounds of vagueness. *Winters* v. *New York*, 333 U.S. 507, 510 (1948). See *Commonwealth* v. *A Juvenile*, Mass. , - (1975).[s] We recognize that, even in light of limiting construction, "the prohibitions may not satisfy those intent on finding fault at any cost"; but we believe that "they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest." *United States Civil Serv. Comm'n* v. *National Ass'n of Letter Carriers*, *supra* at 579.[17] Consequently, we conclude that § 8, as construed in this opinion, is not unconstitutionally vague.

(e) *Articles 16 and 19 of the Massachusetts Declaration of Rights.* The plaintiffs claim that G.L. c. 55, §8, is invalid by virtue of the provisions of arts. 16 and 19 of the Declaration of Rights of the Constitution of the Commonwealth.

Article 16, as appearing in art. 77 of the Amendments, provides as follows: "The liberty of the press is essential to the security of freedom in a state; it ought not, therefore, to be restrained in this commonwealth. The right of free speech shall not be abridged."

Article 19 states: "The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good: give instructions to their representatives, and to request of the legislative body, by way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer."

The plaintiffs' arguments under these provisions generally track their First and Fourteenth Amendment claims,

[s] Mass. Adv. Sh. (1975) 2766, 2788-2792.

[17] In terms of this case, "even if the outermost boundaries of [§ 8] may be imprecise, any such uncertainty has little relevance here, where . . . [the plaintiffs' intended] conduct falls squarely within the 'hard core' of the statute's proscriptions . . . ." *Broadrick* v. *Oklahoma*, 413 U.S. 601, 608 (1973). *Parker* v. *Levy*, 417 U.S. 733, 757 (1974).

except that they add here the claim that, since neither of these articles restricts itself to "persons" in describing the rights protected, corporations are necessarily included within their scope. To support these claims they rely primarily on the opinion of the court in *Bowe* v. *Secretary of the Commonwealth*, 320 Mass. 230 (1946), and the opinion of the two Justices in *First Nat'l Bank I*. Neither opinion supports the contentions of the plaintiffs.

Bowe involved labor unions, not corporations. To the extent there are dicta therein relating to corporations and their rights, it is clear that this court there assumed such a right to free speech to exist — as we do — where a referendum question "might materially affect the property, business or assets of the corporation." *Id.* at 234. Nor does the opinion of the two Justices in *First Nat'l Bank I* go any further. 362 Mass. at 585-586.

Since we have stated previously that the freedoms protected by arts. 16 and 19 are "comparable" to those guaranteed by the First Amendment, *Bowe* v. *Secretary of the Commonwealth*, *supra*, we see no need to elaborate further on our prior discussion of free speech claims by the plaintiffs.[18] General Laws. c. 55, § 8, as applied to these plaintiffs, is not invalid by virtue of these provisions of the Declaration of Rights.

4. *The Equal Protection Issue.*

The plaintiffs' next constitutional claim is that the § 8 prohibition denies them their right to equal protection of the laws under the Fourteenth Amendment and art. 1 of the Declaration of Rights. They argue that because the prohibition impinges on a fundamental constitutional right (free speech) strict scrutiny is required. Alternatively they

[18] The amendment of art. 16 in 1948 subsequent to *Bowe* adding the sentence, "The right of free speech shall not be abridged," does not have relevance to arguments here raised. *Bowe* assumed such a right to exist. See *First Nat'l Bank I* at 586.

conclude that, even if such scrutiny is not required, the statute must fall because it does not bear a reasonable relation to a permissible governmental objective. The plaintiffs find invidious discrimination in the statute's failure similarly to restrict labor unions, voluntary associations such as business trusts, real estate investment trusts, charitable corporations, and limited or general partnerships.

We think that the appropriate standard of review on this issue is not the strict scrutiny that the plaintiffs suggest is apposite but, rather, is the traditional scrutiny involving economic matters. While we agree with the plaintiffs that where free speech is involved strict scrutiny is required (see *San Antonio Independent School Dist.* v. *Rodriquez,* 411 U.S. 1, 17 [1973]; *Police Dept. of Chicago* v. *Mosley,* 408 U.S. 92, 101 [1972]), we have already concluded that the plaintiffs do not possess First Amendment rights on matters not shown to affect materially their business, property or assets. Our inquiry, therefore, is whether the legislative classification "rests upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced [are] treated alike." *F.S. Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415 (1920). See *Pinnick* v. *Cleary,* 360 Mass. 1, 27-28 (1971).

We believe that the legislative classification in § 8 rests on such a difference with respect to all the groups pointed to by the plaintiffs except business trusts and real estate investment trusts. That difference is that general business corporations, unlike labor unions or charitable corporations, have shareholders. Section 8 could represent a legislative desire to protect such shareholders against ultra vires activities, and could thus be "reasonably related to a legitimate public purpose." *Pinnick* v. *Cleary, supra* at 27-28.

With respect to the Legislature's noninclusion of business

trusts and real estate investment trusts which also have "shareholders," the Legislature may justifiably have concluded that such trusts did not present the type of problem in this area presented by general business corporations. See *Liggett Co.* v. *Lee,* 288 U.S. 517, 541 (1933) (Brandeis, J., dissenting in part). Furthermore, "[w]hen legislative authority is exerted within a proper area, it need not embrace every conceivable problem within that field. The Legislature may proceed one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *Mobil Oil Corp.* v. *Attorney Gen.,* 361 Mass. 401, 417 (1972), and cases cited. "It is no requirement of equal protection that all evils of the same genus be eradicated or none at all." *Railway Express Agency, Inc.* v. *New York,* 336 U.S. 106, 110 (1949). See *Buckley* v. *Valeo,* 424 U.S. 1, 99 (1976).

5. *Creation of an "Irrebuttable Evidentiary Presumption."*

The plaintiffs' final argument is that the recent amendment of § 8 creates an irrebuttable evidentiary presumption which deprives them of their right to due process of law. They argue that the legislative statement that "[n]o question submitted to the voters solely concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of . . . [a] corporation" (§ 8) conclusively presumes "a fact which constitutes one of the elements of the crime as defined by the Legislature."

We believe that this argument is without merit for the simple reason that the statutory prohibition does not utilize the device of a presumption to aid the prosecution in proving their case beyond a reasonable doubt. As our previous discussion demonstrates, the Legislature may validly proscribe corporate expenditures on a referendum question solely relating to adoption of a personal GIT. Although § 8 as amended may be inelegantly written, it re-

quires the prosecution to prove that: (1) the defendant is a corporation; (2) the defendant corporation made an expenditure; (3) the purpose of the expenditure was to influence or affect the vote; and (4) that the vote was on a question solely relating to the taxation of the income, property, or transactions of individuals. Unless the Commonwealth can prove these elements beyond a reasonable doubt, *Commonwealth* v. *Kostka*, Mass. , (1976);[h] *In re Winship*, 397 U.S. 358, 364 (1970), it cannot secure a conviction for the specific crime of making an expenditure solely concerning a personal GIT.[19]

Unlike a statute employing a presumption or an inference which allows the trier of fact to find proof of one element of a crime after another element of the crime has been established (see generally *Commonwealth* v. *Pauley*, Mass. [1975],[i] and cases discussed therein; McCormick, Evidence § 342 [2d ed. 1972]), the specific crime set out in § 8 requires direct proof of all its elements.[20] Consequently, we find the plaintiffs' reliance on cases like *Turner* v. *United States*, 396 U.S. 398 (1970), *Leary* v. *United States*, 395 U.S. 6 (1969), and *Tot* v. *United States*, 319 U.S. 463 (1943), misplaced. Section 8 does not contain an irrebuttable presumption; nor does it deprive the plaintiffs of their right to due process of law.

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[h] Mass. Adv. Sh. (1976) 1608, 1630.

[19] This specific crime is admittedly related to the general crime of making such an expenditure on a matter which does not materially affect a corporation's property, business or assets, but we think that the specific prohibition is a separate crime. It appears that the plaintiffs' "conclusive presumption" attack is based on reading the two crimes together, a result perhaps attributable to the legislative redrafting and amending process.

[i] Mass. Adv. Sh. (1975) 2224.

[20] The plaintiffs' argument would have considerable force if the statute indicated that all corporate contributions on a referendum question involving a general GIT were presumed to be expenitures on a GIT solely affecting individuals. That, of course, is not the case here but it is that type of situation which, by employing a presumption as part of the prosecution's case-in-chief, might well violate due process standards.

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH

SUFFOLK, ss
No. 653

THE FIRST NATIONAL BANK OF BOSTON
& others
vs.
ATTORNEY GENERAL

ORDER

This is a petition for declaratory judgment brought before the single justice of the Supreme Judicial Court. The plaintiffs seek a declaration that G.L. c. 55, § 8, as appearing in St. 1975, c. 151, § 1, is unconstitutional, both on its face and as applied to them.

The plaintiffs assert that they intend to use corporate funds to publicize their views on a constitutional amendment which will be submitted to the voters through a referemdum [sic] on the November 2d ballot and which would authorize the Legislature to impose a graduated personal income tax. They also assert that G.L. c. 55, § 8, unconstitutionally precludes them from doing so and that the Attorney General has indicated he will prosecute apparent violations of the statute. The plaintiffs further assert that there is a case or controversy under G.L. c. 231 A, § 1.

The single justice heard the case on April 26, 1976, and reserved and reported the case without decision. On April 30, 1976, the Coalition for Tax Reform, Inc. and United Peoples, Inc. filed a motion to intervene as parties defendant. The original parties and interveners entered into a

supplementary statement of agreed facts and on May 11, 1976, the single justice allowed the motion to intervene and entered a revised reservation and report indicating the changed circumstances.

The case was heard by the court on June 8, 1976. On consideration of the facts and the law applicable, we rule that the plaintiffs have not shown that G.L. c. 55, § 8, is unconstitutional or an invalid exercise of legislative power. The single justice shall order the entry of an appropriate judgment declaring that the statute is valid and enforceable.

A rescript and opinion will follow.

By the Court
/s/ FREDERICK J. QUINLAN
Clerk

September 22, 1976

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.
No. 76-109 Civ.

FIRST NATIONAL BANK OF BOSTON, ET ALS
vs.
ATTORNEY GENERAL

JUDGMENT

This action came on to be heard before the Court, BRAUCHER, J. presiding, and the issues having been duly heard,

It is ORDERED AND ADJUDGED,

that the provisions of G.L. c. 55, § 8 as appearing in St. 1975, c. 151, § 1, are valid under the Massachusetts and United States Constitutions, both on their face and as applied to the plaintiffs, and that the Attorney General may enforce the provisions of said statute.

Dated at Boston, Massachusetts, this twenty-eight day of September, 1976.

Clerk of Court
/s/ JOHN E. POWERS
Clerk
/s/ JOHN E. POWERS

A true copy
ATTEST:
September 29, 1976

APPENDIX D

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH

SUFFOLK, SS
No. 653

No. 76-109 Civ.

THE FIRST NATIONAL BANK OF BOSTON,
NEW ENGLAND MERCHANTS NATIONAL BANK,
THE GILLETTE COMPANY,
DIGITAL EQUIPMENT CORPORATION and
WYMAN-GORDON COMPANY,
PLAINTIFFS

v.

FRANCIS X. BELLOTTI, ATTORNEY GENERAL
DEFENDANT

NOTICE OF APPEAL

Please take notice that The First National Bank of Boston, New England Merchants National Bank, The Gillette Company, Digital Equipment Corporation, and Wyman-Gordon Company hereby appeal, pursuant to 28 U.S.C. § 1257(2), to the Supreme Court of the United States from the Order of the Supreme Judicial Court for the Commonwealth of Massachusetts in this matter entered September 28, 1976, denying plaintiffs' request for a declaration that Massachusetts General Laws chapter 55, § 8 is unconstitutional.

DATED: September 29, 1976

By their attorneys
FRANCIS H. FOX
E. Susan Garsh
BINGHAM, DANA & GOULD
100 Federal Street
Boston, Mass. 02110
617-357-9300

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 1976, I served a copy of the foregoing Notice of Appeal by personally delivering a copy thereof to Thomas R. Kiley, Assistant Attorney General, 1 Ashburton Place, Boston, Massachusetts, attorney for defendant, and Ernest Winsor, Esquire, Massachusetts Law Reform Institute, 2 Park Square, Boston, Massachusetts 02116, attorneys for Intervenors.

E. Susan Garsh

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

FOR THE COMMONWEALTH

SUFFOLK, ss

At Boston,
SJC #653
September 30, 1976
(Suffolk Cty. #76-109 Civ.)

THE FIRST NATIONAL BANK OF BOSTON, et al.,

v.

FRANCIS X. BELLOTTI, ATTORNEY GENERAL

ORDER

Upon consideration by the full court, the plaintiffs' motion for stay or injunction is denied.

By the Court,
/s/ FREDERICK J. QUINLAN
Clerk

September 30, 1976.
A true copy,
ATTEST:

/s/ FREDERICK J. QUINLAN
Clerk, Supreme Judicial Court
for the Commonwealth

APPENDIX F

STATEMENT OF AGREED FACTS

Note: Plaintiff The First National Bank of Boston will be referred to herein as "First National"; plaintiff New England Merchants National Bank will be referred to herein as "Merchants"; plaintiff Wyman-Gordon Company will be referred to herein as "Wyman-Gordon"; plaintiff The Gillette Company will be referred to herein as "Gillette"; and plaintiff Digital Equipment Corporation will be referred to herein as "Digital".

1. Plaintiff First National is a national banking association, organized and existing under the laws of the United States with a usual place of business in Boston, Suffolk County, Massachusetts.

2. Plaintiff Merchants is a national banking association, organized and existing under the laws of the United States with a usual place of business in Boston, Suffolk County, Massachusetts.

3. Plaintiff Wyman-Gordon is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with a usual place of business in Worcester, Worcester County, Massachusetts.

4. Plaintiff Gillette is a corporation duly organized and existing under the laws of the State of Delaware with a principal place of business in Boston, Suffolk County, Massachusetts.

5. Plaintiff Digital is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with a principal place of business in Maynard, Middlesex County, Massachusetts.

6. Defendant Francis X. Bellotti is the Attorney General of the Commonwealth.

7. Plaintiff Banks are engaged in the County of Suffolk in the business of retail, commercial and other forms of banking activities. These include, but are not limited to, maintaining savings and checking accounts for the benefit of both individual and corporate depositors, making loans to individuals and to corporations, acting as trustee for the

benefit of beneficiaries designated by their customers, acting as transfer agent for certain publicly held corporations and performing other services normally associated with the banking business.

8. Wyman-Gordon is a business corporation engaged in the business or die forging, utilizing highly sophisticated metal forming techniques. Wyman-Gordon principally serves the aircraft and turbine engine industries. It has plants in Worcester, Grafton and Millbury, Massachusetts, and employs approximately 1,700 persons in Massachusetts.

9. Gillette is a business corporation engaged in the development, manufacture and sale of blades, razors, toiletries, grooming aids, writing instruments and other consumer products and service. It has plants in South Boston and Andover, Massachusetts, and employs approximately 6,000 persons in Massachusetts.

10. Digital is a business corporation engaged in the design, manufacture, sales and servicing of computers, computer systems, peripherals and associated computer accessories and other items and systems using digital techniques. It operates in a highly competitive market from which such major and well-established companies as RCA, General Electric, Singer and Xerox have elected to withdraw within the past five years. Digital has plants in Acton, Leominster, Marlborough, Maynard, Natick, Northboro, Springfield, Waltham, Westfield, Westminster, West Springfield, and Worcester, Massachusetts, and employs approximately 11,500 persons in Massachusetts.

11. There will be submitted to the voters of Massachusetts in the general election of November 2, 1976, a legislative amendment to the Constitution of the Commonwealth proposing to grant to the General Court the power and authority to impose a graduated income tax on personal incomes. The proposed legislative amendment neither imposes nor requires the imposition of a graduated income tax on

individuals and does not purport to authorize the imposition of graduated taxes upon corporate income. A copy of the proposed amendment is appended hereto and marked "A". A copy of the Summary which will appear on the ballot is appended hereto and marked "B".

12. There is a division of opinion among economists as to whether and to what extent a graduated income tax imposed solely on individuals would affect the business and assets of corporations.

13. It is the position of the management of plaintiffs that a graduated income tax (and thus the proposed Constitutional Amendment) would adversely affect their business and property. None of the plaintiffs have communicated with their shareholders on this matter except as is stated in Paragraph 63.

14. It is the position of the management of plaintiff Banks that one way in which the graduated income tax would adversely affect their business and property is by discouraging persons of high ranking executive and middle management ability from settling, remaining, or working in Massachusetts, thus depriving the Banks of a source of high level executive and middle management talent.

15. As of April 13, 1976, there were 550 employees of First National earning $20,000 or more annually. Of these there are 207 employees earning $20,000 to $24,999, 96 employees earning $25,000 to $29,999, 137 employees earning $30,000 to $59,999 and 10 employees earning $60,000 to $191,000.

16. As of April 12, 1976, there were 175 employees of Merchants earning $20,000 or more annually. Of these there are 134 employees earning $20,000 to $30,000, 33 employees earning $30,000 to $40,000 and eight employees earning $40,000 to $140,000.

17. It is the position of the management of plaintiff Banks that the graduated income tax would adversely af-

fect their business and property by tending to reduce the total balance of individual checking and savings account deposits. As of April 13, 1976, First National had approximately:

126,000 individual checking accounts with an approximate balance of	$146,000,000
and	
137,000 individual savings accounts with an approximate balance of	$206,000,000

As of April 12, 1976, Merchants had approximately:

74,000 personal demand deposits with an approximate balance of	$ 53,500,000
and	
83,000 individual savings accounts with an approximate balance of	$137,700,000

18. It is the position of the management of plaintiff Banks that the graduated income tax would adversely affect their business and property by producing an adverse effect on the total of individual loans made by the Banks.

19. First National had approximately 209,000 individual loans outstanding, with an approximate balance of $227,139,000, as of April 13, 1976.

20. Merchants had approximately 77,000 personal loans outstanding, with an approximate balance of $73,000,000, as of April 12, 1976.

21. It is the position of the management of plaintiff Banks that the graduated income tax would adversely affect their business and property by tending to discourage business from settling or remaining in Massachusetts, with resultant adverse effects on the Banks' industrial loans, deposits, and other services.

22. First National had approximately 6,000 industrial and corporate loans outstanding, with an approximate balance of $1,872,000,000, as of April 13, 1976.

23. Merchants had commercial loans outstanding with an approximate balance of $569,300,000 as of April 12, 1976.

24. First National had approximately 29,000 industrial and commercial deposit accounts, with an approximate balance of $897,000,000 as of April 13, 1976.

25. Merchants had approximately 14,000 commercial deposit accounts with an approximate balance of $358,889,000 as of April 12, 1976.

26. Plaintiff Banks maintain their headquarters in Suffolk County, Massachusetts. They have no branch offices in any other state, or in any Massachusetts county other than Suffolk.

27. In 1972, First National expended or contributed $3,000 to oppose a proposed amendment to the Massachusetts Constitution which would have authorized the imposition of a graduated income tax.

28. In 1972, Merchants expended or contributed $3,000 to oppose a proposed amendment to the Massachusetts Constitution which would have authorized the imposition of a graduated income tax.

29. It is the position of the management of Wyman-Gordon that the graduated income tax (and thus the proposed Constitutional Amendment) would adversely affect its business and property in the following ways, among others:

a. it would tend to discourage persons of high rank-in executive ability from settling or remaining in Massachusetts, thus depriving Wyman-Gordon of a source of high level executive talent, and

b. it would tend to discourage highly skilled and trained, and thus highly paid, engineering and technical specialists from settling in or remaining in Massachusetts, thus depriving Wyman-Gordon of

a source of talent necessary for it to conduct its business.

30. Wyman-Gordon's total number of employees at its Massachusetts plants varies through the years, but remains approximately in the 1,700 - 2,000 range. The total payroll for these employees annualized from April 13, 1976, is approximately $27,000,000.

31. As of April 13, 1976, there were presently 206 employees of Wyman-Gordon earning $20,000 or more. Of these there were 133 junior executives and technicians earning $20,000 to $25,000, 36 executive and technical personnel earning $25,000 to $30,000, and 37 executives earning $30,000 or more. The highest salary paid is $130,000.

32. In 1972, Wyman-Gordon expended or contributed $3,000 to oppose a proposed amendment to the Massachusetts Constitution which would have authorized the imposition of a graduated income tax.

33. It is the position of the management of Gillette that the graduated income tax (and thus the proposed Constitutional Amendment) would adversely affect its business and property by tending to discourage persons of high ranking executive and middle management ability from settling or remaining in Massachusetts, thus depriving Gillette of a source of high level executive and middle management talent, and by tending to shrink disposable income of individuals available for the purchase of consumer products.

34. Gillette's total number of Massachusetts employees is approximately 6,000 and the total annual payroll for these employees was approximately $73,800,000 in calendar year 1974, out of a total United States payroll of $108,200,000.

35. As of April 16, 1976, there were 857 employees at Gillette earning $20,000 or more. Of these there are 574 employees earning $20,000 to $30,000, 226 employees earning $30,000 to $50,000, and 57 employees earning more than $50,00.

36. Gillette's net sales in Massachusetts during the calendar year 1974 were $39,600,000, as against total net sales of $517,700,000 in the United States for the same period.

37. Gillette owned tangible property in Massachusetts worth $30,000,000 in 1974 and leasehold improvements in Massachusetts worth $1,500,000 in calendar year 1974.

38. In 1972 Gillette expended or contributed $3,000 to oppose a proposed amendment to the Massachusetts Constitution which would have authorized the imposition of a graduated income tax.

39. It is the position of the management of Digital that the graduated income tax (and thus the proposed Constitutional Amendment) would adversely affect its business and property in the following ways, among others:

a. it would impair Digital's ability to attract executive, technical and other skilled professional people to Massachusetts, and

b. the number of Massachusetts-based employees wishing to relocate to Digital facilities in New Hampshire, Arizona and elsewhere would increase.

40. Digital's total number of Massachusetts employees as of April 15, 1976, was 11,500. The total annual payroll for these employees for calendar year 1975 was approximately $131,000,000.

41. As of April 15, 1976, there were 1,207 employees at Digital earning $20,000 or more. Of these there were 1,054 employees earning between $20,000 and $30,000, 142 employees earning between $30,000 and $50,000, and 11 employees earning over $50,000.

42. Digital's net sales of products and services to customers in Massachusetts for calendar 1975 was $27,300,000.

43. In 1972, Digital expended or contributed no monies

to oppose a proposed amendment to the Massachusetts Constitution which would have authorized the imposition of a graduated income tax.

44. Plaintiffs intended to expend monies to publicize by paid advertisements in newspapers and other media their contentions with respect to the graduated income tax and the proposed Constitutional Amendment in an attempt to persuade the voters of Massachusetts to defeat the proposed Constitutional Amendment at the general election.

45. First National desires to, and but for G.L. c. 55 § 8 would, place messages in its own in-house monthly newspaper called *About the First*. The purpose of such messages would be to attempt to persuade its own employees to vote against the proposed Constitutional Amendment. This publication is printed by First National solely for its own employees and is mailed to approximately 5,300 employees at their home addresses. Space in the said newspaper is a thing of some value, and it costs money to publish this paper. However, First National has not and will not place such messages in the paper out of respect for the law and for fear of criminal prosecution for violation of the statute. The Attorney General has not indicated that he will prosecute First National for placing such messages in its own in-house newspaper.

46. First National employs four professional economists who frequently comment publicly on economic conditions in Massachusetts, and would, but for G.L. c. 55 § 8, comment publicly on the effect a graduated income tax would have on the Massachusetts economy. The Attorney General has not indicated that he will prosecute First National or the professional economists if the professional economists make such public comments.

47. Wyman-Gordon desires to, and but for G.L. c. 55 § 8 would, express its views on the proposed Constitutional Amendment in its internal newsletter "Information for

Management" distributed to 275 monthly-paid employees. It costs money to print this newsletter, and Wyman-Gordon has not and will not express its views on this matter in said newsletter out of respect for the law and for fear of criminal prosecution for violation of the statute. The Attorney General has not indicated that he will prosecute Wyman-Gordon for placing such messages in its own in-house newsletter.

48. Gillette desires to, and but for G.L. c. 55, § 8 would, express its views on the proposed Constitutional Amendment to its employees through its "Gillette Company Newsletter" and other internal bulletins. It costs money to print and deliver these publications, and Gillette will not express its view on this matter in said publications out of respect for the law and for fear of criminal prosecution for violation of the statute. The Attorney General has not indicated that he will prosecute Gillette for placing such messages in its own internal publications.

49. Digital desires to, and but for G.L. c. 55 § 8 would, express its views on the proposed Constitutional Amendment to its employees through "Digital This Week", an internal newsletter distributed weekly to employees, and through "On Line", a quarterly magazine mailed to employees at their home addresses. It costs money to print and distribute these publications, and Digital will not express its views on this matter in said publication out of respect for the law and for fear of criminal prosecution for violation of the statute. The Attorney General has not indicated that he will prosecute Digital for placing such messages in its own internal publications.

50. There is appended hereto a two-page document marked "C". The said document lists certain Real Estate Investment Trusts which are organized under the laws of Massachusetts, and sets forth certain financial and other information concerning these trusts.

51. The total assets of the Real Estate Investment Trusts shown on Exhibit "C" are approximately $5,458,901,000.

52. The total "Gross Income" for the said trusts is approximately $402,829,000. This is an annual gross income figure which reflects the latest reported accounting of the varied fiscal years of each of the REITS on the list.

53. There are many other business trusts organized under the laws of Massachusetts, although no income or asset statistics on said business trusts are readily available to the parties. The Massachusetts Secretary of State's records show 7,500 Massachusetts business trusts have filed reports in accordance with G.L. c. 182 §2 as of April 1, 1976.

54. During 1972, the most recent year for which income statistics are available, the Statistical Abstract of the United States shows that there are 15,000 Massachusetts partnerships which earned a total of $1,816,000,000 in business receipts.

55. The Department of Labor and Industries, *Directories of Labor Organizations in Massachusetts* (1975) lists 2,250 individual local labor organizations in the state with a membership of 590,625.

56. In a joint session of the two branches held July 2, 1969, the General Court approved a proposed amendment to the Massachusetts Constitution which purported to authorize the imposition of a graduated income tax. The proposed amendment received two hundred four (204) votes in the affirmative and forty-nine (49) in the negative.

57. In a joint session of the two branches held May 12, 1971, the General Court approved a proposed amendment to the Massachusetts Constitution which purported to authorize the imposition of a graduated income tax. The proposed amendment received two hundred forty-five (245) votes in the affirmative and twenty (20) in the negative.

58. On November 7, 1972, the proposed amendment to the Massachusetts Constitution which purported to authorize the imposition of a graduated income tax was submitted to the voters of the Commonwealth at the Biennial State Election. A total of two million five hundred three thousand four hundred ninety-four (2,503,494) ballots were cast at that election. Three hundred thirty-five thousand eight hundred twenty-five (335,825) blank ballots were recorded on the graduated income tax amendment. The proposed amendment was rejected by the voters. It received one million four hundred fifty-five thousand six hundred thirty-nine (1,455,639) votes in the negative and seven hundred twelve thousand and thirty (712,030) votes in the affirmative.

59. On June 6, 1972, the Committee for Jobs and Government Economy was organized as a non-elected political committee with a purpose of supporting or opposing tax proposals which would influence the state's economy. The Committee for Jobs and Government Economy raised and expended approximately one hundred twenty thousand dollars ($120,000) in opposition to the proposed graduated income tax amendment as indicated in copies of the financial reports filed by the Committee which are appended hereto and marked "D". The Committee for Jobs and Government Economy was the only duly organized non-elected political committee to raise and expend money to oppose the proposed amendment.

60. On September 22, 1972, the Coalition for Tax Reform, Inc., was organized as a non-elected political committee with the stated purpose of promoting passage of the proposed graduated income tax amendment. The Coalition for Tax Reform, Inc., raised and expended approximately seven thousand dollars ($7,000) to promote the proposed amendment, as indicated in copies of the financial reports filed by the Coalition which are appended hereto and marked "E". The Coalition for Tax Reform, Inc., was the only duly organized political committee to raise

and expend money to promote the proposed amendment.

61. Forty-one (41) states and the District of Columbia impose income taxes on personal income. Thirty-six (36) states and the District of Columbia have graduated income taxes.

62. The boards of directors of all of the plaintiff corporations were notified of the commencement of this action. The boards of directors of three of the plaintiffs formally ratified the commencement of the action.

63. At the annual meeting of stockholders of First National Boston Corporation, which is the parent of the plaintiff First National, held on March 18, 1976, in response to a question on the proposed graduated state income tax, the management of First National responded, in part, that as presently proposed, its economists feel that a graduated tax would affect the entire middle-management group and that it was already hard enough to keep businesses from moving out of the state. The question and response were reprinted in the Questions & Answers section of the Summary Report of the Annual Meeting, which was mailed to all shareholders.

The parties have agreed that the facts recited in the Statement of Agreed Facts are true. Plaintiffs and the defendant do not necessarily agree with each other as to the relevance of each fact. Plaintiffs and the defendant each reserve the right to argue as to the relevance, or lack of relevance, of any particular fact set forth herein.

FRANCIS H. FOX
FRANCIS H. FOX
BINGHAM, DANA & GOULD
Attorneys for the Plaintiffs

FRANCIS X. BELLOTTI
Attorney General
By THOMAS R. KILEY
THOMAS R. KILEY
Assistant Attorney General

"A"

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Seventy-five

PROPOSAL FOR A LEGISLATIVE AMENDMENT TO THE CONSTITUTION AUTHORIZING THE GENERAL COURT TO IMPOSE AND LEVY A GRADUATED TAX ON PERSONAL INCOME AND TO BASE SUCH TAX UPON THE FEDERAL INCOME TAX.

A majority of all the members elected to the Senate and House of Representatives, in joint session, hereby declares it to be expedient to alter the Constitution by the adoption of the following Article of Amendment, to the end that it may become a part of the Constitution [if similarly agreed to in a joint session of the next General Court and approved by the people at the state election next following]:

ARTICLE OF AMENDMENT

ART. . As an alternative to levying a tax on incomes in the manner provided in Article XLIV of the Amendments to the Constitution, the General Court shall have full power and authority to levy a tax on personal incomes at rates which are graduated according to the total amount of income received, regardless of the sources from which it may be derived, and to grant reasonable exemptions, deductions, credits and abatements to such tax. Further, the General Court may define the tax liability or the total income upon which such tax is levied or the graduated rates at which it is taxed by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time and may prescribe reasonable exceptions to and modifications of such provision.

IN JOINT SESSION, August 15, 1973.

The foregoing legislative amendment of the Constitution is agreed to in joint session of the two houses of the General Court, said amendment having received the affirmative votes of a majority of all the members elected; and it is referred to the next General Court in accordance with a provision of the Constitution.

(s) (Illegible)
Clerk of the Joint Session.

IN JOINT SESSION, May 7, 1975.

The foregoing legislative amendment is agreed to in joint session of the two houses of the General Court, said amendment having received the affirmative votes of a majority of all the members elected; and this fact is hereby certified to the Secretary of the Commonwealth, in accordance with a provision of the Constitution.

(s) EDWARD B. O'NEILL
Clerk of the Joint Session.

SECRETARY OF STATE
May 29 11:12 AM '75
ELECTION DIVISION

"B"

QUESTION 2

The proposed amendment would authorize, but not require, the Legislature to modify the personal income tax laws of Massachusetts by the use of graduated rates instead of the present flat or uniform rates. The graduated rates would be based on the total amount of income received, without distinguishing between earned and unearned income. The Legislature would also be authorized to provide for reasonable exemptions, deductions and abatements and could base any such graduated income tax provision on provisions of Federal income tax law.

"C"

20 LARGEST REAL ESTATE INVESTMENT TRUSTS IN MASS.*

	Name	*Fiscal Year*	*Total Assets*	*Gross Income*
1.	Chase Manhattan Mortgage Mortgage & Realty Trust, Boston	1975	$940,643,000.	$38,079,000.**
2.	Continental Mortgage Investors, Boston	1975	$729,050,000.	$58,225,000.
3.	Connecticut General Mortgage and Realty Inc., Springfield	1975	$442,000,000.	$41,361,000.
4.	Diversified Mortgage Investors, Boston	1975	$373,984,000.	$28,816,000.
5.	Equitable Life Mortgage & Realty Investors, Boston	1975	$358,961,000.	$32,555,000.
6.	C.I. Mortgage Group, Boston	1975	$324,735,000.	$20,602,000.
7.	Massmutual Mortgage & Realty Inv., Springfield	1975	$231,038,000.	$18,604,000.
8.	North American Mortgage Mortgage Investors, Boston	1975	$212,478,000.	$20,939,000.
9.	Cabot, Cabot & Forbes Land Trust, Boston	1975	$206,169,000	$13,846,000.
10.	Security Mortgage Investors, Boston	1975	$205,029,000.	$11,621,000.
11.	First Pennsylvania Mortgage Trust, Boston	1975	$188,758,000.	$ 9,702,000.
12.	Institutional Investors Trust, Boston	1975	$186,468,000.	$11,951,000.
13.	C. I. Realty Investors	1975	$185,768,000.	$30,514,000.
14.	BT Mortgage Investors,	1975	$170,316,000.	$ 9,889,000.
15.	Gulf Mortgage & Realty Inv., Boston	1975	$150,540,000.	$11,023,000.
16.	State Mutual Inv., Worcester	1975	$137,914,000.	$ 9,696,000.
17.	Barnes Mortgage Investment Trust, Boston	1975	$118,153,000.	$ 7,464,000.
18.	American Fletcher Mortgage Inv., Boston	1974	$114,473,000.	$ 7,617,000.
19.	Hubbard Real Estate Investment, Boston	1975	$ 94,993,000.	$ 8,784,000.
20.	TMC Mortgage Investors, Boston	1974	$ 87,431,000.	$11,541,000.

* American Banker, Vol. CXL No. 191, Oct. 2, 1975
** Figures supplied by National Association of Real Estate Investment Trusts, 1101 Seventeenth St., N.W. Washington, D.C. 20036

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH

SUFFOLK, ss.

Civil Action No. 76-109

THE FIRST NATIONAL BANK OF BOSTON, et al.

v.

FRANCIS X. BELLOTTI, ATTORNEY GENERAL

SUPPLEMENTARY STATEMENT OF AGREED FACTS

1. Coalition for Tax Reform, Inc. (CTR) is a non-profit corporation organized and existing under the laws of Massachusetts. CTR is a so-called "umbrella" organization of individuals and other membership organizations, set up for the primary purpose of working for passage of the graduated income tax amendment to the state constitution. Its member organizations include the League of Women Voters, the Massachusetts Teachers Association, Americans for Democratic Action, Massachusetts Fair Share, Inc., Common Cause, National Association of Social Workers, Massachusetts Council of Churches, United Peoples, Inc., and others. CTR was the principal advocate of the GIT in the 1972 referendum campaign and expects it will be the principal advocate in the 1976 campaign.

2. United Peoples, Inc. (UP) is a non-profit membership corporation organized and existing under the laws of Massachusetts. Its members consist of persons living in the Framingham area. It was organized for the purpose of promoting the rights of welfare recipients and working on other low-income issues. Its board of directors has adopted a policy in favor of passage of a graduated income tax (GIT).

3. It is the position of the leadership of CTR and UP that voter approval of a graduated income tax amendment would not materially affect the property, business or assets of business corporations, because said leadership believes that:

(a) All economic surveys known to the leadership of CTR and UP conducted in the last 30 years to determine the factors which influence business location decisions have concluded that taxation is only sixth or seventh in importance, after such other, more influential, factors as availability and cost of labor, raw materials, power, transportation and the availability of markets.

(b) The factor of taxation referred to in the aforementioned surveys has meant business, as opposed to personal, taxation, or the combination of both.

(c) Economists have generally assumed that personal taxation, as a separate factor, has such an insignificant effect on business location decisions that it has not been a factor worth studying.

(d) Economists have, however, surveyed the factors which affect executives' personal location decisions, and have generally concluded that other factors are more important than personal taxation, such as the quality of schools, the availability of transportation in and out of the business center, cultural features and other "quality-of-life" factors.

(e) There is no economic study known to CTR or UP which suggests that the introduction of a graduated income tax would deter potential executives from moving into, or cause them to move out of, this state.

(f) While the personal acquisitiveness of many high paid businessmen has in the past motivated, and will in the future motivate, them to fight the introduction of a graduated income tax, if such a tax were in

fact introduced in this state such businessmen would grumble but, generally, pay the tax and remain.

FRANCIS H. FOX
BINGHAM, DANA & GOULD
Attorneys for Plaintiffs

FRANCIS X. BELLOTTI
Attorney General
By: THOMAS R. KILEY
Assistant Attorney General

/s/ ERNEST WINSOR
ERNEST WINSOR
MASSACHUSETTS LAW REFORM INSTITUTE
Attorney for Coalition for Tax Reform, Inc. and United Peoples, Inc.

Dated: May 11, 1976

APPENDIX G

HOUSE ..... No. 547

By Mr. Businger of Brookline, petition of John A. Businger that provision be made for a graduated personal income tax. Taxation.

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred & Seventy-Seven

AN ACT PROVIDING FOR A GRADUATED PERSONAL INCOME TAX.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 62 of the General Laws is hereby amended by striking out sections 2 to 6, inclusive, as most recently amended by sections 38 to 41, inclusive, of chapter 684 of the acts of 1975, and inserting in place thereof the following sections:—

Section 2. (a) Massachusetts gross income shall mean the federal gross income, modified as required by section seven, with the following further modifications:—

(1) The items to be added thereto are:—

(A) Interest on governmental obligations excluded under section one hundred and three of the Code, other than interest from any such obligation issued by the commonwealth, any political subdivision thereof, or any agency or instrumentality of either of the foregoing, which is exempt from taxation under clause Twenty-fifth of section five or chapter fifty-nine or any other provision of law.

(B) The dividends excluded under section one hundred and sixteen of the Code.

(C) Earned income from foreign sources excluded under section nine hundred and eleven of the Code.

(D) Contributions for annuity contracts excluded under section four hundred and three (b) of the Code to the extent that such contributions were made pursuant to a salary reduction agreement authorized under said section and were not required under a retirement program of the employer.

(E) Amounts excluded under Subchapter S of the Code.

(F) Amounts included in or considered to be Massachusetts gross income under any other provision of this chapter.

(2) The items to be deducted therefrom are:—

(A) Interest on obligations of the United States exempt from state income taxation to the extent included in federal gross income.

(B) Amount included in federal gross income under Subchapter S of the Code.

(C) Dividends received from a corporate trust subject to taxation under this chapter to the extent that such dividends are exempt from taxation under section eight of this chapter.

(D) Income from any contributory annuity, pension, endowment or retirement fund of the United States government or the commonwealth or any political subdivision thereof, to which the employee has contributed.

(E) Income from annuity stock bonus, pension, profit-sharing, annuity or deferred-payment plans or contracts described in sections four hundred and three (b) or four hundred and four of the Code until an aggregate amount of such income has been deducted under this subparagraph equal to the aggregate of all amounts previously subjected to taxation under this chapter.

(*b*) Massachusetts adjusted gross income shall be the Massachusetts gross income less the following deductions:

(1) The first one thousand dollars of net capital loss; provided, however, that any excess over one thousand dollars of such net capital loss shall be applied to reduce the

net capital gain of the taxpayer, plus one thousand dollars of income in each of the five succeeding years to the extent that such amount exceeds the total of any net capital gain and one thousand dollars of income of any taxable year intervening between the taxable year in which the net capital loss arose and such succeeding taxable year.

(2) The deductions allowable under sections sixty-two and four hundred and four, without regard to section two hundred and sixty-five of the Code, provided, however, the following deductions shall not be allowed:—

(A) The deduction for long-term capital gains allowed by section one thousand two hundred and two of the Code.

(B) The deductions allowed to life tenants and income beneficiaries by paragraph six of section sixty-two of the Code insofar as such deductions are allowed to a trust or estate subject to taxation under this chapter.

(C) The deduction for moving expenses allowed by section two hundred and seventeen of the Code.

(D) Any deduction allowed by Subchapter S of the Code.

(E) Any deduction relating or allocable to any income not included in Massachusetts gross income or a proportionate part of any deduction which is in part so relating or allocable.

(F) Any net operating loss deduction allowed by section one hundred and seventy-two of the Code.

(G) In the case of an individual who is an employee within the meaning of section four hundred and one *(c)* (1) of the Code, the deductions allowed by section four hundred and four and four hundred and five *(c)* of the Code to the extent attributable to contributions made on behalf of such individual; however, no contribution on behalf of such individual shall be treated as an excess contribution under this chapter unless treated as an excess contribution for federal tax purposes in the year made.

(H) The deduction allowed by section one thousand three hundred and seventy-nine *(b)* (3) of the Code.

(c) Massachusetts taxable income shall be the Massachusetts adjusted gross income less the deductions and exemptions allowable under section three.

Section 3. In determining the Massachusetts taxable income, the following deductions and exemptions shall be allowed:—

(a) Deductions:

(1) The net amount of the Massachusetts adjusted gross income of trustees or other fiduciaries subject to taxation under section nine or ten as is payable to or accumulated for persons not inhabitants of the commonwealth to the extent that such income would not be subject to taxation under section five A if received by a non-resident.

(2) Such net amount of the Massachusetts adjusted gross income of trustees, executors or administrators as is, pursuant to the terms of the will, deed or other instruments governing the estate or trust, currently payable to or irrevocably set aside for public charitable purposes, or to or for the benefit of any organization or organizations established and operated exclusively for charitable purposes.

(3) Taxes paid to the United States under the provisions of the Federal Insurance Contributions Act or the Federal Railroad Retirement Act.

(4) All sums deducted from wages as contributions to an annuity, pension, endowment or retirement fund of the United States government, the commonwealth or any political subdivision thereof, and any income from any contributory annuity, pension, endowment or retirement fund of the United States government or the commonwealth or any political subdivision thereof, to which the employee has contributed, or any income from a contributory annuity, pension, endowment or retirement fund of any other state or any political subdivision thereof, provided that income

from any such similar fund established under the laws of the commonwealth is not subject to taxation in such other state or political subdivision.

(5) All amounts deductibel [sic] as alimony under section two hundred and fifteen of the Code.

(6) Interests and dividends in the amount of one hundred dollars for a single person or a married person filing a separate return or two hundred dollars for a husband and wife filing a joint return from savings deposits, savings accounts, shares or share savings accounts in any savings or co-operative bank, trust company or credit union incorporated in or chartered by the commonwealth; in any national banking association, federal savings or loan association or federal credit union located in the commonwealth; in any banking company or Morris Plan company subject to chapter one hundred and seventy-two A; in any savings or loan association under the supervision of the commissioner of banks.

(7) In the case of an individual who maintains a household which includes as a member one or more qualifying individuals, the employment related expenses paid during the taxable year to enable the taxpayer to be gainfully employed to be computed according to and subject to the limitations and restrictions of section two hundred and fourteen (c), section two hundred and fourteen (d) and section two hundred and fourteen (e) (5) of the Internal Revenue Code; provided, that in the case of a taxpayer who is gainfully employed on less than a substantially full-time basis only that portion of the amount paid which is attributable to employment related expenses necessary for such gainful employment shall be taken into account in computing the deduction allowed herein. If the taxpayer is married for any period during the taxable year, there shall be taken into account employment related expenses incurred during any month of such period only if both spouses, except where one

spouse is a qualifying individual described in section two hundred and fourteen (b) (1) (c) of the Internal Revenue Code, are gainfully employed. No deduction shall be allowed under this subparagraph for any amount paid by the taxpayer (i) to his or her spouse or (ii) to an individual bearing a relationship to the taxpayer described in paragraphs (1) through (8) of section one hundred and fifty-two (a) of the Internal Revenue Code who, for the taxable year of the taxpayer is a member of the taxpayer's household or is claimed as a dependent of the taxpayer for the purposes of section one hundred and fifty-one (e) of the Internal Revenue Code. If the taxpayer is married at the close of the taxable year, the deduction provided herein shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year. For the purposes of this subparagraph, the terms "employment related expenses", "qualifying individual" and "maintaining a household" shall each have the same meaning as in section two hundred and fourteen of the Internal Revenue Code. The expenses on which the deduction is based shall have been paid during the tax year that is being reported. No expenses incurred prior to January first, nineteen hundred and seventy-five shall be claimed under this section regardless of when paid.

(8) In the case of an individual who maintains a household which includes as a member one or more individuals under the age of twelve who qualify for exemption as a dependent under section one hundred and fifty-one of the Code, six hundred dollars; provided, that no deduction shall be allowed under this subparagraph if a deduction is claimed under subparagraph (7) of this paragraph. If the taxpayer is married at the close of the taxable year, the deduction provided herein shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year. For the purposes of this subparagraph, the term

"maintaining a household" shall have the same meaning as in section two hundred and fourteen of the Code.

(9) An amount equal to the deduction for medical, dental and other expenses allowed under section two hundred and thirteen of the Code. No deduction shall be allowable under this paragraph to an individual who elects the standard deduction under section one hundred and forty-one of the Code on his federal income tax return or to one who files a joint federal income tax return with his spouse unless a joint return is also filed under this chapter.

(10) An amount equal to the fees, in excess of three per cent of the Massachusetts adjusted gross income paid within the taxable year to any agency licensed to place children for adoption by the taxpayer on account of the adoption of a minor child.

(b) Exemptions:

(1) In the case of a single person,

(A) a personal exemption of two thousand dollars,

(B) An additional exemption of two thousand dollars if the taxpayer was totally blind at the close of his taxable year, and

(C) an additional exemption of six hundred dollars if the taxpayer had attained the age of sixty-five before the close of his taxable year.

(2) In the case of a husband and wife filing a joint return,

(A) a personal exemption of two thousand dollars and an amount not exceeding two thousand dollars, equal to the earned income included in the gross income of the spouse having the smaller amount of such income; and an additional exemption of six hundred dollars for the spouse having the smaller amount of income, provided that the total of such income of such spouse for the calendar year in which the taxable year of the taxpayer began did not exceed two thousand dollars. "Earned income", as used herein, shall mean salary, wages, other employee compensation, self-

employment income and any amount received as a pension or annuity to the extent includable in earned income as defined under section nine hundred and eleven (b) of the Code.

(B) an additional exemption of two thousand dollars for each spouse who was totally blind at the close of his taxable year, and

(C) an additional exemption of six hundred dollars for each spouse who had attained the age of sixty-five before the close of his taxable year.

(3) In the case of a married person filing a separate return,

(A) a personal exemption of one thousand dollars,

(B) an additional exemption of two thousand dollars if the taxpayer was totally blind at the close of his taxable year, and

(C) an additional exemption of six hundred dollars if the taxpayer had attained the age of sixty-five before the close of his taxanle [sic] year.

(4) An exemption of six hundred dollars for each individual who qualifies for exemption as a dependent under section one hundred and fifty-one (e) of the Code.

(c) Except as hereinafter provided for a non-resident, if the taxable year of any person subject to tax under this chapter is a short taxable year, and such short taxable year is not due to the death of such person, any exemption under paragraph (b) of this section shall be limited to any amount equal to the exemption otherwise allowable by this section multiplied by a fraction the numerator of which is the number of days in tha [sic] taxable year and the denominator of which is three hundred and sixty-five. If a taxpayer is a non-resident for all or any part of a taxable year, he shall be allowed exemptions under this section equal to the amount otherwise determined under this section multiplied by a fraction the numerator of which is his Massachusetts

gross income and the denominator of which is the amount which would have been his Massachusetts gross income had he been a resident of the commonwealth throughout the taxable year.

Section 4. The taxable income of residents, non-residents to the extent specified in section five A, and corporate trusts to the extent specified in section eight shall be taxed in accordance with the following table:—

IF TAXABLE INCOME IS OVER	BUT NOT OVER	TAX IS	OF AMOUNT OVER
$0	$ 2,000	$0 + 3.75%	0
2,000	4,000	75 + 4.25%	2,000
4,000	6,000	160 + 4.75%	4,000
6,000	8,000	255 + 5.25%	6,000
8,000	12,000	360 + 5.75%	8,000
12,000	16,000	590 + 6.50%	12,000
16,000	22,000	850 + 7.75%	16,000
22,000	30,000	1315 + 9.25%	22,000
30,000	50,000	2055 + 10.50%	30,000
50,000	.....	4155 + 11.00%	50,000

Section 5. (*a*)Notwithstanding the provisions of section four, no tax shall be imposed in the instance in which the total income for the taxable year does not exceed three thousand dollars for a single individual or five thousand dollars in the aggregate for a husband and wife, nor shall any tax be imposed under this chapter which shall reduce such total income below three thousand dollars and five thousand dollars respectively. No exemption shall be allowed under this section to any married individual unless a joint return is filed. In the case of a short taxable year, occurring for any reason other than residence during one portion of the normal taxable year and non-residence during another portion, there shall be substituted for the

amounts of three thousand dollars and five thousand dollars those amounts which bear the same relation to such sums as the number of days in the taxable year bears to three hundred and sixty-five. For purposes of this section, "total income" means the sum of (i) the Massachusetts adjusted gross income, (ii) the amount deducted under subparagraph (A) of section two (a) (2), and (iii) interest on governmental obligations excluded under section one hundred and three of the Code to the extent not includable in Massachusetts gross income under section two (a) (1) (A). With respect to a person who is a non-resident for all or part of the taxable year, total income shall be determined as if he were a resident of the commonwealth throughout the entire taxable year.

(b) Notwithstanding any other provision of this chapter, no tax shall be imposed under this chapter upon any stock bonus, pension or profit-sharing trust qualifying under section four hundred and one of the Code.

Section 5A. (*a*) The Massachusetts gross income of non-residents of the commonwealth shall be determined solely with respect to items of gross income from sources within the commonwealth of such person and in determining the adjusted gross income of such non-resident only those deductions shall be allowed which are attributable to items included in Massachusetts gross income as so determined. Items of gross income from sources within the commonwealth are items of gross income derived from or effectively connected with any trade or business, including employment carried on by the taxpayer in the commonwealth or derived from the ownership of any interest in real or tangible personal property located in the commonwealth. In computing taxable income, the non-resident shall be allowed the deductions and exemptions provided in section three.

(b) The commission shall adopt regulations providing for the method of determining the items and amounts of

Massachusetts gross income derived from sources within the commonwealth by a non-resident, based upon the method set forth in section thirty-eight of chapter sixty-three or upon any other reasonable method.

(c) In applying this section, the compensation paid by the United States to its uniformed military personnel assigned to duty at military posts, bases or stations within the commonwealth for services rendered by said personnel while on active duty, shall be deemed to be from sources other than sources within the commonwealth.

Section 6. The following credits shall be allowed against the tax imposed by this chapter:

(a) A credit shall be allowed against taxes imposed by this chapter to a resident for taxes due any other state, territory or possession of the United States, or the Dominion of Canada or any of its provinces on account of any item of Massachusetts gross income subject to the following restrictions and limitations: (i) the amount of such taxes due on such income shall exclude interests and penalties; (ii) the amount of such taxes due shall be reduced by any federal credit therefor allowable on the resident's federal income tax return; and (iii) the amount of the credit allowable shall be the lesser of such taxes as reduced by (i) and (ii), or the amount of tax imposed by this chapter multiplied by a fraction the numerator of which is such item of Massachusetts gross income and the denominator of which is the total Massachusetts gross income, as the case may be.

(b) (1) Every qualified taxpayer, as defined in paragraph three of this subsection, shall be entitled to a credit of four dollars for himself, four dollars for his spouse, if any, and eight dollars for each qualified dependent, as hereinafter defined, provided, however, that no such credit shall be allowable if the total income of such individual and his spouse, as defined in paragraph *(a)* of section five, exceeds five thousand dollars for such year. No such

credit shall be allowable to a married individual unless a joint return is filed. If the tax due as shown by the return of any individual is less than the total amount of the credits which he is entitled to claim pursuant to this paragraph, such individual shall be entitled to a refund in the amount of the excess of the credits over the tax otherwise due.

(2) Any individual entitled to claim any credit pursuant to paragraph one of this subsection and not otherwise required to file a return under this chapter may obtain a refund in the amount of such credit by filing a return and claiming a refund. Any refund to which an individual is entitled under the provisions of this paragraph shall be made in the same manner as other refunds under this chapter. No refund or credit shall be allowed pursuant to this paragraph unless such credit or refund is claimed on a return filed on or before the fifteenth day of the fourth month following the close of the taxable year or within any extension of time granted for filing such return.

(3) As used in this subsection, the term "qualified taxpayer" means an individual who was an inhabitant of the commonwealth for not less than six months during the preceding calendar year, and who was not a person whom another taxpayer was entitled to claim as a dependent under section three, and the term "qualified dependent" means an individual other than a spouse whom a qualified taxpayer was entitled to claim as a dependent under said section three.

(c) In the instance in which Massachusetts gross income of an individual includes an item of income from a trustee or other fiduciary, which income is to be taxed to the trustee or fiduciary pursuant to section ten, a credit shall be allowed against the tax imposed equal to the amount of tax to be paid on such item of income by the fiduciary or trustee.

SECTION 2. Said chapter 62 is hereby further amended by striking out section 8, as appearing in section 2 of

chapter 723 of the acts of 1973, and inserting in place thereof the following section:—

Section 8. (a) A corporate trust engaged within the commonwealth in any business, activity or transaction, whether or not it maintains an office, or place of business within the commonwealth, shall be subject to the taxes imposed by this chapter.

The Massachusetts adjusted gross income of such corporate trust shall be determined as if it were a resident natural person, provided, however, that for purposes of any determination involving sections three hundred and fifty-one through three hundred and sixty-eight of the Code any corporate trust shall be treated as a corporation. No deductions or exemptions allowable under section three of this chapter shall be allowed to a corporate trust. The taxable income shall be the Massachusetts adjusted gross income apportioned to Massachusetts in accordance with section thirty-eight of chapter sixty-three.

(b) The provisions of paragraph (a) shall not apply to any corporate trust which (i) is a regulated investment company under section eight hundred and fifty-one of the Code or a real estate investment trust under section eight hundred and fifty-six of the Code; (ii) is a holding company as hereinafter defined; or (iii) its apportionment percentage for apportioning its Massachusetts adjusted gross income under paragraph (a) of this section is less than ten per cent. As used in this paragraph, the term "holding company" means any corporate trust in which ninety per cent of the book value of its assets, at the end of the taxable year, are securities and at least seventy-five per cent of such securities are issued by affiliates and at least ninety per cent of its Massachusetts gross income consists of interest, dividends and gains from the sale or exchange of capital assets; the word "affiliate" means a member of an affiliated group as defined under section one thousand five hun-

dred and four of the Code; and the word "securities" means transferable shares of beneficial interest in any corporation or other entity, bonds or debentures of any issuer or notes and other evidences of indebtedness of affiliates.

(c) Dividends on shares of any corporate trust subject to taxation under this chapter shall be exempt from taxation except as hereinafter provided. Any earnings and profits accumulated prior to taxable years commencing after December thirty-first, nineteen hundred and seventy, and during a period, if any, that such corporate trust was not subject to taxation under this chapter solely by reason of the fact that it had elected not to file with the commissioner an agreement to pay a tax shall be considered tax-free earnings and profits and the amount thereof shall be determined as of the first day of the first taxable year commencing after December thirty-first, nineteen hundred and seventy. Any earnings and profits accumulated for taxable years commencing after December thirty-first, nineteen hundred and seventy, to the extent that such earnings and profits were not subject to tax under this chapter, shall also be considered tax-free earnings and profits. Notwithstanding any other provision of this chapter, dividends paid by any corporate trust at any time while it has tax-free earnings and profits, as so determined, shall be deemed to have been made from such tax-free earnings and profits to the extent thereof; and any such dividends deemed to have been made from tax-free earnings and profits shall be includable in Massachusetts gross income, and the deduction provided for in section two (a) (2) (D) shall not apply to such dividends. Except for dividends paid from tax-free earnings and profits, all such dividends shall be exempt from taxation.

SECTION 3. Said chapter 62 is hereby further amended by striking out section 10, as most recently amended by section 3 of chapter 723 of the acts of 1973, and inserting in place thereof the following section:—

Section 10. The income received by trustees or other fiduciaries shall be taxed in the following manner:

(a) The income received by trustees or other fiduciaries described in subsection *(c)* of this section shall be subject to the taxes imposed by this chapter to the extent that the persons to whom the same is payable, or for whose benefit it is accumulated, are inhabitants of the commonwealth; provided, however, if the income received by such trustees or other fiduciaries would be subject to taxation under section five A if received by a nonresident, such income shall be taxable regardless of whether the persons to whom the income from the trust is payable or for whose benefit it is accumulated are residents or nonresidents of the commonwealth. Income received by trustees or other fiduciaries described in subsection *(c)* of this section which is accumulated for unborn or unascertained persons, or persons with uncertain interests shall be taxed as if accumulated for the benefit of a known inhabitant of the commonwealth.

For the purposes of this section and of section nine income shall be deemed to be accumulated for unborn or unascertained persons or persons with uncertain interests when thus accumulated by estates, by trustees or other fiduciaries, who are subject to the provisions of this section or of section nine, for the benefit of any future interest other than a remainder presently vested in a person or persons in being not subject to be divested by the happenings of any contingency expressly mentioned in the instrument creating the trust.

(b) In addition to the deductions allowable under other sections of this chapter, trustees or other fiduciaries may deduct (1) from the income taxable under section four a proper amount for the amortization, according to any approved method, of premiums paid upon bonds owned by them, the income of which is taxable under said section and

(2) from income taxable under section four before the income of the beneficiaries shall finally be determined:

(A) such proportion of the following items paid within the year as the amounts of income taxable under said subsection bear to the total income received by the fiduciary from all sources, (i) amounts paid for rental of safe deposit boxes; and (ii) amounts paid for premiums on surety bonds of the fiduciary; and (B) the compensation actually paid during the year to the fiduciary upon such income taxable under section four as is payable to or accumulated for inhabitants of the commonwealth, or for unborn or unascertained persons with uncertain interests, to an amount not exceeding seven pre cent [sic] of such income subject to taxation.

(c) the provisions of subsections *(a)* and *(b)* of this section shall apply to guardians and conservators appointed by a Massachusetts court; trustees under the will of a person who died an inhabitant of the commonwealth; and trustees under a trust created by a person or persons, any one of whom was an inhabitant of the commonwealth at the time of the creation of the trust or at any time during the year for which the income is computed, or who died an inhabitant of the commonwealth, any one of which trustees or other fiduciaries is an inhabitant of the commonwealth; provided, however, that said provisions shall not apply to trustees of pooled income funds, as defined in section six hundred and forty-two (c) (5) of the Code, or to trustees of charitable remainder annuity trusts or charitable remainder unitrusts, as defined in section six hundred and sixty-four (d) of the Code.

(d) Income received by estates held in trust by trustees or other fiduciaries, other than the trustees and fiduciaries described in subsection (c) of this section, which income would be subject to taxation under section five A if received by a nonresident, shall be taxed at the same rate and

in the same manner as is provided in section five A, and subject to the same exemptions and deductions.

SECTION 4. Said chapter 62 is hereby further amended by striking out section 12A, as most recently amended by section 5 of chapter 723 of the acts of 1973, and inserting in place thereof the following section:—

Section 12A. For any beneficiary whose exemptions provided under clauses one, two, three, and four of paragraph (b) of section three exceed said benficiary's income subject to taxation for the preceding calendar year, a fiduciary may, upon application by such beneficiary, claim an exemption in the amount of such excess. In the event an inhabitant of the commonwealth is a beneficiary of more than one fiduciary, the aggregate of the exemptions allowable against said inhabitant's shares of income from all fiduciaries shall not exceed the amount by which said inhabitant's exemptions allowable under clauses one, two, three, and four of paragraph (b) of section three exceed the amount of said inhabitant's income subject to taxation for the preceding calendar year.

SECTION 5. Subsection *(c)* of section 17 of said chapter 62 is hereby amended by striking out paragraph (1), as amended by section 6 of said chapter 723, and inserting in place thereof the following paragraph:—

(1) the offset against interest and dividends and the carryover on account of net capital loss provided in clause one of subsection *(b)* of section two; (2) the exemptions provided in section five and clauses one, two, three, and four of paragraph (b) of section three; (3) the credit for taxes provided in subsection *(a)* of section six to the extent that such taxes are assessed to the partners in their individual capacities, but such credit shall be allowed to the partners in their individual returns, (4) the credits provided in subsection *(b)* of section six, and (5) the credit provided in subsection *(c)* of section six.

SECTION 6. Said section 17 is hereby further amended by striking out subsection (e), as inserted by section 1 of chapter 912 of the acts of 1973, and inserting in place thereof the following subsection:—

(e) A common trust fund which qualifies as such under section five hundred and eighty-four of the Code shall be treated as a partnership for the purposes of taxation under this chapter. Such partnership shall compute all items of income, loss, deduction or credit without reference to any item of income, loss, deduction or credit of any participating account except that the provisions of section ten shall be applicable to such partnership. No loss of such partnership may be allocated to any participating account but such loss may be used by the partnership as provided in paragraph (1) of subsection *(b)*of section two. No participating account deriving income from other sources than such partnership may use any item of income, loss, deduction or credit from such other sources to reduce any income derived from such partnership except as provided in sections twelve and twelve A.

SECTION 7. Section eighty-eight of chapter six hundred and eighty four of the acts of nineteen hundred and seventy-five is hereby repealed.

SECTION 8. The provisions of this act shall take effect on January first nineteen hundred and seventy-eight and apply to taxable years commencing after December thirty-first nineteen hundred and seventy-six, provided that the voters, in the Biennial state election of nineteen hundred and seventy-six shall have approved an amendment to the state constitution repealing Article Forty-four, and empowering the General Court to enact a graduated income tax.